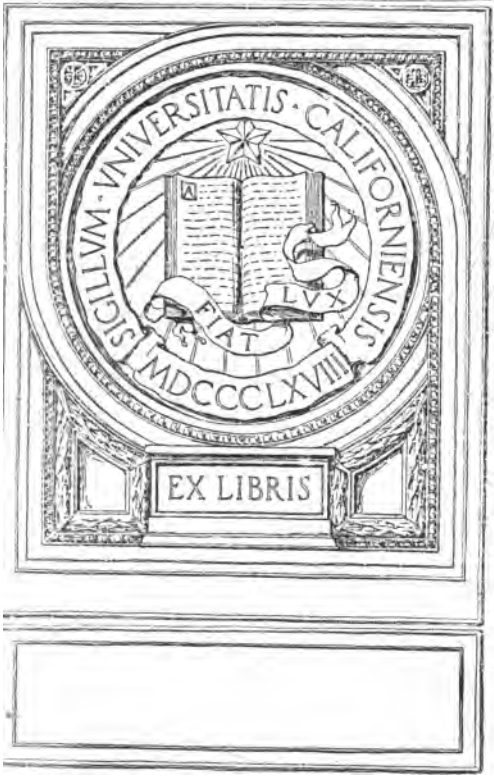
THE WORLD OF TO-DAY

# DOMINION HOME RULE IN PRACTICE



BY
ARTHUR BERRIEDALE KEITH

HUMPHREY MILFORD
OXFORD UNIVERSITY PRESS
LONDON EDINBURGH GLASGOW COPENHAGEN
NEW YORK TORONTO MELBOURNE CAPE TOWN
BOMBAY CALCUTTA MADRAS SHANGHAI PEKING
1921



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## THE WORLD OF TO-DAY

*Under the general editorship of*

VICTOR GOLLANCZ

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# DOMINION HOME RULE IN PRACTICE

## CHAPTER I

### THE GOVERNMENT OF THE DOMINIONS

#### 1. *Cabinet Government*

'DOMINION' as a technical term denoting a colony possessing responsible government owes its origin to a resolution of the Colonial Conference of 1907, which aimed at drawing a clear distinction between such colonies and those the administration of which was controlled by the government of the United Kingdom. The selection of the term had obvious disadvantages, since 'His Majesty's dominions' is the legal designation of the whole of the territories, including the United Kingdom, which own the royal sovereignty; but it had the merit of embodying a graceful recognition of the primacy among the colonies of the Dominion of Canada, which had been accorded that designation on its formation in 1867, when anxiety to avoid friction with the United States prompted the refusal of the title of Kingdom which Sir John Macdonald would have desired. The Dominions now comprise the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, and Newfoundland. The destiny of Newfoundland must lie in union with Canada, though in the absence of any special emergency this consummation may be long delayed; but any further consolidation of the Dominions is improbable, for New Zealand and Australia, though closely united by many ties, have yet already developed distinct national characters, which render union unlikely of accomplishment save possibly under stress of external aggression.

Of the Dominions, New Zealand, South Africa, and

Newfoundland possess unitarian constitutions, one Parliament in each possessing full authority over the whole territory, though in the Union the provinces possess legislatures with wider authority than is accorded normally to local authorities. Canada and Australia, on the other hand, possess federal constitutions, under which legislative and executive authority is shared between the central and the local legislatures on definite principles which neither can vary. All the Dominions save Newfoundland have territories which stand apart from the normal administration; thus New Zealand governs the Cook Islands and Samoa, the Union the territory in South-West Africa formerly in German hands, the federal government of Australia Papua, Norfolk Island, the Pacific territory ceded by Germany, the Northern Territory of Australia, and the site of the federal capital, while the federal government of Canada has full authority over the Yukon and the North-West territories, where the scanty population forbids the establishment of the provincial form of government.

Throughout the Dominions and in the Australian States and the Canadian Provinces the system of cabinet government as perfected in the United Kingdom prevails. Objections have been raised to it on theoretical grounds; the fathers of Australian federation, admirers of the constitution of the United States, were prepared to contemplate the abandonment of the system in favour of the American system of a non-parliamentary executive, and opinion in Labour circles in the Commonwealth has at times protested against the interruption of effective administration consequent on parliamentary crises, and suggested the election of ministers for a fixed period as a remedy. But these arguments have not prevailed against the belief that in the immediate responsibility of ministers to Parliament lies the best security for democratic administration, and the history of responsible government in the Dominions records the steady approximation of the Dominion system of cabinet government to that in force in the mother country.

The place of the King in United Kingdom politics is taken by a representative, styled in the Dominions other

than Newfoundland Governor-General, in Newfoundland and the States of Australia Governor, and in the Provinces of Canada Lieutenant-Governor. The Lieutenant-Governors are appointed by the Governor-General on the advice of his ministers, the Governors-General and Governors by His Majesty on the advice of the Imperial government, which ascertains before an appointment is made that the proposed nominee will be acceptable to the government concerned. In addition to the many statutory duties imposed on the Governor, he is endowed with the whole of the prerogative of the Crown pertaining to executive government so far as it is necessary for the administration of the territory, including the prerogative of mercy; the Privy Council in 1916 held that his authority included the right to grant charters of incorporation, though the power had never been claimed in the colonies. The prerogatives withheld are those alone which in the British conception are inherent in complete sovereignty—the right to declare war, to issue coinage, and to confer honours.

The vast authority of the Governor is exercised, by constitutional law or custom, on the advice of his ministers, who are responsible to Parliament for the advice which they tender to him. The assimilation of the position of the Governor with regard to his ministers and that of the King is close, but not complete. The Governor, who holds office normally for five or six years, lacks the weight of authority which inevitably attaches to the views of the Sovereign, especially one of ripe years and experience of affairs, and seldom enjoys that close association with his advisers which is the right of monarchy in the United Kingdom. On the other hand, if the Governor has less influence, he has greater power than the King: in order to preserve the Sovereign from personal responsibility and the resultant implication in party strife, the conventions of the constitution require that in all his political actions he must proceed in accordance with the advice of his ministers, a rule which received signal exemplification in the case of the royal promise to create peers which procured the assent of the House of Lords to the passing of the Parliament Act of 1911. In the Dominions,

however, there is no such strong motive to compel acceptance of unpalatable counsel, and constitutional usage still permits a Governor to decline to accept the advice of his ministers, if he thinks that he can procure other advisers to take their place in the event of their resignation. In particular a Governor is expected, in the event of a request from a ministry for a dissolution on a reverse in Parliament, to withhold his assent if he considers that an alternative government can be formed to carry on business; the short life of Australian Parliaments renders members adverse to a penal dissolution, and refusals of ministerial advice on this score have been common. There is, however, obviously a tendency to disapprove even this limited exercise of independence by a Governor, and Sir R. Munro-Ferguson, as Governor-General of the Commonwealth from 1914–20, acted in entire accord with the British usage in accepting the advice of his ministers in circumstances which formerly would have been deemed to justify the exercise of an independent judgement, while an attempt at personal intervention in 1916 led to the recall of the Governor of New South Wales. The British rule has of late been followed in Canada as regards the Dominion government, in New Zealand, and the Union, but it is not yet established in the Canadian Provinces or Newfoundland; the explanation is obvious: it is in the larger communities alone that there has been fully developed that sense of political responsibility among ministers which would render intervention by the Governor unwise and dangerous.

The cabinet system in the Dominions resembles in essentials that of the United Kingdom, but a distinction between ministers who are members of that body and other ministers is only beginning to emerge in Canada; as a rule the limited number of members of a Dominion ministry renders the distinction needless. As a rule also cabinets include one or more ministers without portfolios. The ministry constitutes the Executive Council which meets normally, save in Canada, under the presidency of the Governor, to transact formal business such as the passing of Orders in Council under statutory powers. At the meetings of the cabinet for the discussion of policy

the Governor, like the King, is never present. In some cases, as in Canada, the Commonwealth, and the Union, the Executive Council nominally includes all those who have ever been sworn members of it, but only members of the cabinet of the day are summoned to its meetings. The unity of the cabinet depends on the subordination of its members to the Prime Minister, who receives the Governor's commission to form an administration, and on whose resignation the ministry ceases to exist; the individual ministers retaining office merely until the appointment of their successors. The Prime Minister has the right of selecting his own colleagues save in the case of Labour ministries in Australia, the members of which are elected by the Parliamentary Labour parties in caucus. While the right of the Governor to select his Prime Minister is undoubted, it is much more common in the Dominions than in the United Kingdom for the outgoing Prime Minister to suggest his successor and for the Governor to act on this advice. The degree of authority of the Prime Minister depends largely on his personality: the cases of Sir John Macdonald, Sir Wilfrid Laurier, Mr. Seddon, General Botha, and Mr. Hughes illustrate the domination over his colleagues which may be attained by men of strong character and clear convictions. The principle of cabinet solidarity is, on the whole, fairly well observed, though coalition ministries have found a difficulty in maintaining it. In the case of Labour governments, however, the policy of the administration is not decided by the cabinet, but by the Parliamentary Labour parties as a whole, and the members of these parties in their turn are bound by the 'platform' of the Labour organization in the country. The discipline of the Labour parties attains a high level of excellence; the attendance of the members is unfailing, and with even a small majority a Labour ministry can be assured of effective activity in a degree impossible to ministries of other political complexion.

Ministers in the Dominions are expected to busy themselves in the detailed work of the ministries which they control to an extent impossible in the United Kingdom. The permanent civil service in Australia and New

Zealand and in the Union of South Africa is largely divorced from political influences by the institution of Civil Service Commissions to regulate appointments and promotions; some progress in the same direction has been made in Canada. The Civil servants of the Dominions, however, have not yet attained the status of those in the United Kingdom, a fact in part accounted for by defective methods of recruitment and by the payment of inadequate salaries, and in part by the greater opportunities of advancement available in other careers.

### 2. *The Parliaments*

The Dominions have remained faithful to the bicameral system which they inherited from the United Kingdom; one chamber legislatures exist only in the Provinces of Canada other than Quebec and Nova Scotia, and, while Labour in Australia demands the abolition of upper houses in the States, it has done nothing so far to bring about this result. The lower house in Canada alone bears the style of House of Commons; in the Commonwealth and New Zealand it is styled House of Representatives, and in the other Dominions, the States, and the Provinces, Legislative Assembly or House of Assembly. The upper chamber bears normally the style of Legislative Council, but in the federations and the Union the term Senate has been adopted.

The lower houses are essentially democratic in composition, the members being elected on a franchise which as a rule demands no more than full age (in some cases temporary concessions being allowed in respect of war service), and a brief period of residence; aliens are excluded, and restrictions exist regarding naturalized persons. Women have equal rights with men in Australia, New Zealand, the Dominion and most of the Provinces of Canada, but not in Newfoundland, nor in the Union, though the principle has at last received endorsement there by a majority vote in the Assembly despite protests by the older school of Dutch members. Restrictions on women being elected members are not yet completely removed, and in Australia and New Zealand no women members have yet secured election; women, however,

have sat in Canadian Provincial Assemblies. Voting by ballot is universal, and preferential voting exists in the Commonwealth, Victoria, Queensland, and Western Australia; a complete system of proportional representation exists in Tasmania, without giving general satisfaction; New South Wales and New Zealand have found second ballots unsuccessful, and the former has now tried proportional voting. Automatic redistribution of seats to meet changes in the population exists in some cases, and various systems of absent voting have been tried as well as half-hearted attempts to compel voters to record their votes. The duration of lower houses is in Australia and New Zealand three years only; in Newfoundland and some Canadian Provinces it is four years, and elsewhere five years, subject in every case to the possibility of prior dissolution by the Governor. Not more than a year may intervene between sessions of Parliament, and by its sole initiative in matters of finance the lower house determines the executive government of the day, and in it all the more important ministers sit. Members are paid £1,000 a year in the Commonwealth, £800 in Canada, and in other cases smaller sums, subject to deductions for non-attendance.

The upper houses of the Commonwealth, Victoria, South Australia, Western Australia, and Tasmania are elective, the members holding office for six years; in the States the franchise is more restricted than in the case of the lower houses, and only men not under thirty years of age are eligible as members. In New South Wales, Queensland, the Dominion of Canada, Quebec, and Nova Scotia the members are nominated for life; in New Zealand members were originally nominated in this way; then the period was reduced to seven years, and an Act has just become effective under which election with proportional voting is substituted for future use. In the Union election by the provincial councils applies to four-fifths of the members, and nomination—in part to secure representation of native interests—to the remaining fifth, but the reconstitution of the Senate is under consideration.

It has been as little possible in the Dominions as in the United Kingdom to arrive at any satisfactory solution

as to the relations between the two houses. The upper houses of the Australian States when elective have, like the Commonwealth Senate, asserted their right to a full voice in all legislation and in the control of any expenditure out of the normal; and the deadlock provisions which have been devised have not been found workable in practice. In New South Wales and Queensland the number of members in the upper houses is unlimited, and hence they are liable to be swamped; harmony between the two chambers in the former case has in several instances been achieved by adding additional members. In the case of Queensland a vehement political struggle in 1907–8 ended in the passing of an Act to provide for the reference to the people of matters in dispute between the two houses, and under it in 1917 the question of the abolition of the Council was referred to the people by a Labour government, only to be decisively rejected. In 1920, therefore, the Labour government secured from the acting Governor, an ex-Labour minister, the swamping of the Council in order to enable it to carry two measures rejected by that house as confiscatory in principle; and the house has therefore ceased to enjoy any independent authority. In Newfoundland, though the number of members of the Council is unlimited, the assent of the Imperial government to appointments is requisite under the constitution, and relations between the two houses have finally been adjusted on the model of the Parliament Act. Under the new constitution of the New Zealand Council the financial powers of that body are regulated in part on the model of the Parliament Act, while other matters of dispute may be adjusted by a joint session or in the last resort a double dissolution of Parliament. In Canada and its Provinces no effective means of coercing the upper houses exists; thus in 1912 the government of Sir R. Borden had to acquiesce in the refusal of the Senate to approve the proposed grant of 35,000,000 dollars to the British navy. In the Union the Senate has not shown any inclination to interpret its duties as involving more than the detailed improvement of the legislation sent up by the Assembly.

While both houses as a rule represent, directly or

indirectly, the whole population, special provision is made in New Zealand to secure the interests of the Maori race, who in special constituencies elect four members to the House of Representatives, while three are nominated to the Council, and the cabinet includes a member of the native race. Certain restrictions are imposed in Canada and Australasia on the exercise of the franchise by British Asiatic subjects and by aborigines, and in the Union the vast body of the native and coloured population (which greatly outnumbers the white population) and of British Indians are excluded from the vote, which they preserve only in the Cape Province on the conditions under which it was granted there before the Union came into being.

The powers of the Dominion Parliaments are exceedingly wide, though in the case of the two federations limits are necessarily imposed upon them by the principle of the division of authority between the federal and the local legislatures. Apart from this each legislature has power to make laws for the peace, order and good government of the territory it controls, and it alone is the judge of what enactments are necessary for this purpose. It is in no degree bound to follow British models in legislation, and in point of fact many innovations in social arrangements have been adapted by the United Kingdom from Dominion practice. It can enact legislation to exclude from its territory any persons it thinks fit, including British subjects; it decides freely in what manner the population of the Dominion is to be recruited; it can order the deportation of British subjects for no other ground than that they have failed to maintain themselves. It can appropriate private property and cancel contracts without compensation if it pleases. It is denied no power necessary for government; though the Governor has not the coinage prerogative, it is recognized that the Dominions have full power to regulate as they please the question of coinage and to settle the conditions, if any, on which British coinage may be used in their territories. The Dominion legislatures could empower the grant of titles of honour which would be valid locally; they could forbid the use of titles in their territory. The only powers

which they do not possess are those which are incompatible with their status as non-sovereign powers; the legislative effect of Dominion enactments is still confined, in the absence of express provision by Imperial legislation, to the territorial limits of the Dominion: thus a Dominion legislature cannot punish murder or bigamy committed beyond its limits, and the laws of the Dominions are not normally in force on vessels on the high seas, while their power to regulate their naval vessels of war and their armed forces when overseas depends on express Imperial legislation in either case. Canada, however, has already asked for a general relaxation of this restriction, and her request will doubtless in due course be conceded, subject to arrangements to prevent conflict of jurisdiction between the Imperial and the Dominion Parliaments, by providing that the extra-territorial legislation of either shall apply only to such British subjects as by residence or otherwise fall properly under their control. More important is the limitation that no Dominion legislature has authority to pass legislation inconsistent with its status as a member of the British Empire; thus a Dominion legislature has no legal authority to enact a declaration of war or peace, or the secession of the Dominion from the Empire, for these are powers appropriate only to a fully sovereign state. It is also doubtful to what extent a Dominion Parliament can divest itself of its legislative functions by their wholesale delegation to other bodies; it has been held by the Privy Council that the initiative and referendum in Manitoba are unconstitutional, and, though the decision was based on technical grounds, it is at least probable that any Dominion Act which deprived the Parliament of true deliberative functions might be held invalid. Finally, no Dominion can pass legislation which is repugnant to any Imperial Act applicable to the Dominion, but this restriction has long ceased to be of serious importance owing to the abstention of the Imperial Parliament from passing legislation applicable to the Dominions and the sanction from time to time given to alter Imperial Acts.

The privileges and practices of the Dominion Parliaments are based closely on the British model, but t[illegible]

procedure is in some degree simplified and adapted to the more primitive conditions of Dominion political life; the debates in the lower houses fall short, on the whole, of the seriousness of those of the House of Commons. The office of Speaker is not deemed to demand a high degree of impartiality from its holder, and some Speakers have held it consistent with their position to further by their rulings the interests of their party.

Prior to the rise to political power of the Labour movement in Australia, distinctions between political parties, as Liberal or Conservative, were somewhat vague and evanescent; the growth of Labour has induced the other sections to form more or less united parties styled Liberal or Nationalist, which agree in opposing the advanced Socialism of the Labour parties. In New Zealand the long rule of the Liberals from 1891 ended in 1912, but a coalition was formed in 1915 for the war period; it was dissolved in 1919, and a Reform party is now in power facing a Liberal and Labour opposition. In Canada, where Labour is yet weak, the traditional Liberal and Conservative parties (the latter reconstructed as a Unionist party by the accession under the stress of war conditions of a section of Liberals, some of whom, however, have since rejoined their old party) are confronted with the growth of a Farmers' movement based on the desire to secure a low tariff, the encouragement of British imports, and a measure of trade reciprocity with the United States. In the Union since 1912 the South African party, led first by General Botha and then by General Smuts, has been confronted by the Nationalist party, which aims at a South African republic, the Unionists, who represent the British middle-class interests, and the Labour party, representing the white mineworkers, Dutch and British. The general election of 1920 cost the South African party many seats lost to the Nationalists, while the Unionists suffered equally severely at the hands of Labour. Efforts by the Prime Minister to secure the co-operation of all parties have since failed, and General Smuts has enunciated the definite programme of a union of all those parties which are willing to make head against the propaganda of secession from the Empire, while his

readiness to consider a well-thought-out plan of immigration meets a principle asserted by the Unionists. There remains, however, outside the party system the vast body of the natives, who claim that the government is conducted without due regard to their needs. In Newfoundland, personalities rather than real political issues have been responsible for most party quarrels; the last election saw, unfortunately, a revival of divisions on religious grounds, and religion now plays some part in political strife in Australasia, coupled there with sympathy with Irish aspirations. Party organization does not differ substantially from the British model; Labour is especially efficient, and in Australia the State labour organizations effectively dictate the policy to be followed by Labour members in Parliament. The result, unquestionably, is deleterious to the prestige and effectiveness of Parliament; members of the party are bound to vote in accordance with decisions which may be contrary to their own views, and, when Labour governments are in power, ministers are often unable to give effect to amendments proposed by the opposition, which otherwise they would gladly accept, and the true spirit of Parliamentary co-operation is rendered impossible.

### 3. *The Judiciary*

The functions of the Judiciary in the Dominions are yet more important and difficult than those of the judges of the United Kingdom. The latter in their attitude to Acts of Parliament have only the obligation of interpreting the true legal meaning of the enactment; the former have in addition the obligation of determining whether the enactment is in accord with the powers of the Parliament, or whether it exceeds in whole or part the legislative authority granted by the constitution or is repugnant to an Act of the Imperial Parliament in force in the territory. Questions of this kind are, of course, of perpetual occurrence in the case of the federations where legal powers are divided between the federal and the local legislatures, but they are by no means unknown in other cases, and it is to the credit of the Dominion judges that seldom if ever have they permitted their opinions to be

biased by their political views; notable instances of suc judgements were afforded in Canada and New Zealan by the decisions of the courts respecting the validity ( the legislation of these Dominions regarding compulsor service in the war. Less fortunate, perhaps, has bee the selection of eminent judges to deal with questions ( industrial conciliation and arbitration in Australia an New Zealand; the issues involved in these cases len themselves only in minor degree to legal treatment, an the impossibility of enforcing effectively the decisior of the courts in these matters tends to lessen the respe felt for the pronouncements of the courts in other que tions. This fact has been recognized in the latest legi lative effort in the Commonwealth to deal with arbitratic and conciliation.

For the judges to be able to give authoritative judgemen on matters affecting the validity of Parliamentary enac ments, it is, of course, essential that they should be ind pendent of executive control in the fulfilment of the duties. Hence the Dominion constitutions recogniz the principle that a judge should hold office for life— with provision in some cases for retirement at a specifie age—subject to removal by the Crown or its representa tive on addresses from both Houses of Parliamen conditions which, of course, effectively secure judici independence. One serious inroad, however, has bee made into this principle by the Labour government ( Queensland, which has secured the enactment by Parli ment of a measure which confers the status of a Supren Court judge on the President of the Industrial Cour though that official holds office on a temporary tenu and, therefore, is dependent on the favour of the executiv government for reappointment. The doctrine of tl popular election of judges and their liability to reca has been enunciated in Labour circles both in Canad and Australia, but the question has not become so far o of practical political importance.

Subject to the control of the Supreme Courts in tl Dominions exist elaborate systems of inferior jurisdi tion, exercised by officials with a less independent tenu of office, a status rendered free from objection by reas

of their liability to control by the higher courts. The exercise of the independent jurisdiction of the courts affords the subject a large measure of effective protection against disregard of his rights by the executive, and his position is further secured by the fact that a simpler and more complete remedy for breaches of contract (and in some instances for torts) committed by government officials is provided by Dominion law than is afforded in the United Kingdom. On the other hand the executive government in case of extreme emergency may risk breaking the law with the intention of securing an Indemnity Act from the legislature, as was done by the Union government in 1914 when it illegally seized and expelled from the Union certain labour agitators, for the legislatures are not under any constitutional disability forbidding the passing of *ex post facto* legislation. As in the United Kingdom, war conditions from 1914 rendered inevitable many derogations from the normal rights both of British subjects and aliens, and as was inevitable executive governments have found the wide powers thus given too convenient to render them anxious to secure their repeal; a remarkable instance of this extension of war powers was seen in Australia in 1920, when under the War Precautions Act a regulation was issued prohibiting the payment of money to the seamen's unions during a shipping strike, with the result that the strikers were compelled to capitulate for want of funds.

## CHAPTER II

### THE FEDERATIONS

THE constitutions of both Canada and the Commonwealth owe much to the influence of the constitution of the United States, but a vital distinction between the cases is afforded by the decision of the fathers of Canadian federation to retain the principle of responsible government as practised in the Canadian provinces. In the case of Canada the ideal of Sir John Macdonald was to create a real unity, but local feeling proved too strong for this ambition, and the Provinces were left with substantial

independence. In Australia federation was long delayed, for there was no foreign power, as in the case of Canada, sufficiently near and dangerous to render union imperative for the purpose of maintaining the national existence; and when a combination of circumstances, including the emergence of a great power in the Pacific to which the Australian policy of immigration restriction must be unwelcome, induced the colonies to federate, it was necessary to make many concessions in order to secure the surrender of the complete autonomy on which they prided themselves. Hence in the case of Canada all direct connexion between the Imperial government and the Provinces was shut off; the Lieutenant-Governors of the Provinces were left to be appointed by the Dominion government and to hold office subject to Dominion control, and the Dominion government was made the sole representative of Canada *vis-à-vis* the Imperial government. To the Dominion also was accorded the right of disallowing Provincial legislation of which it disapproved. Further, in allocating powers between the Dominion and the Provincial legislatures the principle was adopted that all the powers not expressly given to the latter were vested in the Dominion. In the case of Australia, on the other hand, the States retain direct communication with the Imperial government; the Governors are appointed by the King, and are not subject to control or recall by the Commonwealth government; the laws of the States can be disallowed by the Imperial government alone; and powers are distributed between the States and the Commonwealth on the basis that the former retain all the powers previously possessed by them as colonies which are not formally given exclusively to the Commonwealth, while the Commonwealth receives certain powers exclusively and enjoys others concurrently with the States, subject to the rule that, if a Commonwealth and a State Act conflict, the latter yields to the former. The importance of these differences must not be exaggerated; though the Lieutenant-Governors of the Provinces are not directly appointed by the Crown, they exercise the royal prerogatives not less fully than the Governors, and the Provinces on the one hand and the Commonwealth on

the other have proved to be possessed under the decisions of the Courts of wider legislative competency than was perhaps designed by the framers of either constitution.

The exclusive powers conferred on the Canadian Provinces include the whole topic of property and civil rights, the solemnization of marriage, the incorporation of companies with provincial objects, municipal institutions, the control of public lands belonging to the Province, the establishment and maintenance of prisons, hospitals, asylums and other charities, and local works and undertakings, excluding, however, railways or other works extending beyond Provincial limits, steamship lines connecting the Province with any other place, and such local works as the Parliament of Canada may declare to be for the general advantage of Canada or of two or more Provinces. All matters of a merely local or private nature are also entrusted to the Provinces, together with the administration of justice, including the constitution and maintenance of courts of civil and criminal jurisdiction, and civil procedure. Their powers of taxation are limited to direct taxation and the imposing of shop, saloon, tavern, auctioneer and other licences with a view to raising revenue for Provincial, local, or municipal purposes; but they can also borrow money on the sole credit of the Province. Punishment by fine, penalty, or imprisonment may be imposed for breach of any enactment of the legislature within the ambit of its power. The Dominion on the other hand has exclusive power in all matters not expressly assigned to the Provinces, and without prejudice to this plenitude of authority is granted the sole right to legislate regarding military and naval defence, the postal service, the census and statistics, navigation and shipping, beacons, buoys, and lighthouses, quarantine and the establishment of marine hospitals, sea coast and inland fisheries, interprovincial and international ferries, currency, banking, bills of exchange, interest, legal tender, weights and measures, patents, copyright, bankruptcy, marriage and divorce, the criminal law, including procedure but excluding the constitution of courts, naturalization and aliens, and Indians and the lands reserved for them. The Dominion possesses an

unfettered right of taxation and of raising loans and managing its property, and a general power to regulate trade and commerce, which, however, as interpreted by the courts, includes only regulation for political purposes, such as the imposition of restrictions on trade in arms or in liquor. Both the Dominion and the Provinces may regulate immigration and agriculture, but the Dominion legislation prevails in the event of conflict. The power to legislate as to education belongs to the Provinces, but no law may prejudicially affect any right or privilege with respect to denominational schools enjoyed by any class of persons at the date of union; moreover, when any system of separate schools existed at the union or has been created since, an appeal lies to the Dominion government from any Act or decision of a Provincial authority affecting any right or privilege of a Protestant or Roman Catholic minority; if the award then made by the Dominion government is not carried out, the Dominion Parliament may pass remedial legislation for the Province. But the difficulties of the procedure are such as to deter any administration from attempting this course, which in 1896 largely contributed to the defeat of the Conservative government. Finally, the Dominion possesses full legislative authority to carry out any obligations imposed by treaty on Canada, including the right for this purpose to invade the sphere of authority of the Provinces, though it is usual to obtain the concurrence of the Provinces in the course proposed. The Provinces, however, have a right denied to the Dominion, that of free amendment of their constitutions save as affecting the office of Lieutenant-Governor.

The powers of the Commonwealth of Australia include the postal service, the census and statistics, lighthouses, lightships, beacons and buoys, quarantine, fisheries in Australian waters beyond territorial limits, astronomical and meteorological observations, currency, legal tender, banking (other than State banking not extending beyond the limits of the State), bills of exchange, weights and measures, patents, copyright, bankruptcy, insurance (other than State insurance confined to State limits), foreign corporations and trading or financial corporations

formed within the limits of the Commonwealth, marriage and divorce, invalid and old age pensions, naturalization and aliens, immigration and emigration, the influx of criminals, the control of railways with respect to military and naval transport, the acquisition on just terms of property from any State, and, subject to the consent of the State concerned, the acquisition or construction of railways in a State. It may also legislate for the people of any race (other than the aboriginal inhabitants of any State), for whom special legislation is deemed necessary, for the relations of the Commonwealth with the islands of the Pacific, and for external affairs, a power which appears to be no more extensive than that possessed by Canada regarding treaty obligations. The Commonwealth powers as to trade and commerce are confined to the regulation of foreign and interstate trade (excluding therefore the control of industry within a State) and to conciliation and arbitration for the settlement of industrial disputes extending beyond the limits of any one State; indirectly, however, it can greatly influence trade by its exclusive power of imposing customs and excise duties, and of granting bounties, though the States are permitted to grant bounties on metals, and with the consent of the Commonwealth on other products also. The Commonwealth has, in addition, a general power of taxation, but not so as to discriminate between States or parts of States; and it controls the military and naval forces, which no State may maintain save with its consent. The Commonwealth may not accord preferential treatment to any State by any law regarding revenue, trade or commerce, nor deprive any State of the reasonable use of its waters for conservation or navigation, nor may it legislate as to religion. The States may not coin money nor make anything save gold or silver legal tender, nor may they discriminate between their own citizens and those of other States; and the Commonwealth Parliament may forbid State authorities giving preferential treatment on State railways, if such treatment is held by the Inter-State Commission to be undue and unreasonable, or unjust to any State. Commonwealth property is exempt from taxation by the State, and *vice versâ*. The

States preserve their former powers of constitutional change, but their position is less secure than that of the Provinces of Canada, for the whole constitution of the Commonwealth is subject to alteration by a vote of the electorate consequent either on an Act of the Parliament or on the passing of a bill by either house and its repeated rejection by the other. For an alteration, however, to become effective, it must be approved by a majority of voters and a majority of States, and no provision affecting any State can have effect unless approved by a majority of the electors in that State.

The interpretation of the two constitutions has been carried out by different agencies; in Canada appeals on constitutional issues may be brought from the final courts of the Provinces direct to the Judicial Committee of the Privy Council, or be carried to the Supreme Court of the Dominion, whence in suitable cases an appeal may be brought to the Judicial Committee, which, in point of fact, has determined the interpretation of the Dominion constitution. Many anomalies have been found to exist; the position of companies, for instance, is hopelessly involved, and the legislative activity of both the Dominion and the Provinces is hampered seriously. But on the whole the constitution has proved successful, and Quebec in particular is jealous of any suggestion of change, especially as the constitution accords to French a place of equality in official use with English in that Province and in the proceedings of the Dominion Parliament and Courts. In the case of the Commonwealth, the constitution permits appeals to the Privy Council from the High Court, but only with the consent of that Court if the matter in question concerns the relative powers of the Commonwealth and the States, or of the States *inter se*, and in effect the constructive interpretation of the constitution has lain in the hands of the High Court. The latter has been guided largely by United States precedents, which the Judicial Committee has deemed inapplicable to Canada. A gradual change, moreover, has been shown in the trend of the decisions of the Court, the more recently appointed justices leaning towards an interpretation of the constitution extremely generous to the Common-

wealth; thus during the war it pronounced the Commonwealth entitled to fix retail prices of food and to limit drastically individual liberty. Even so, however, it is claimed, and not by the Labour party alone, that large increases of federal authority are essential, and that the Commonwealth should have power to deal generally with trade and commerce, to regulate labour disputes whether or not extending beyond one State, to control corporations formed under State laws, to deal with monopolies, and to expropriate them in suitable cases. Various efforts to secure these reforms have been made, but at referenda in 1911, 1913, and 1919 the suggested changes have been rejected by the electors, though the voting shows that they possess many supporters. The Labour party would go further, and create a unitary state with subordinate local legislative bodies, while the Nationalist government has adopted the plan of seeking to secure recommendations for a wholesale revision of the constitution from a conference of representatives of the Commonwealth and State interests.

From the point of view of the States the situation is unsatisfactory, as they are largely dependent on subsidies, at present at the rate of 25s. a head, paid by the Commonwealth to recompense them for the loss of their former customs and excise duties, and the Commonwealth can bring pressure to bear by diminishing these payments, and thus placing the States in financial difficulties. In Canada the Provinces receive permanent subsidies fairly adequate in character; and the most substantial grievance on this score is the fact that the prairie Provinces, Manitoba, Alberta, and Saskatchewan, are not permitted to control their public lands, which are administered by the Dominion, though the question of their surrender has at times been raised. All the Provinces have also a grievance in the exercise by the Dominion of its power of disallowing their legislation; this right, which at the outset was freely used by the Dominion government, had gradually fallen into desuetude save in cases where the enactments were plainly unconstitutional, but the government of Sir R. Borden asserted and actually exercised its right of disallowance in a case where a Provincial Act repudiated contractual obligations—a decision which the

Provincial governments have regarded with anxiety as an effort to place them under Dominion tutelage in matters within the scope of their legal authority.

## CHAPTER III

### THE POWERS OF THE UNITED KINGDOM

In normal circumstances the Imperial government exercises no control over the executive governments of the Dominions, although the head of the administration in the Dominions and the States is an Imperial officer, subject to the instructions of the Crown issued through the Secretary of State for the Colonies. By constitutional practice the Governor accepts the advice of his ministers, or declines it if he believes he can secure another set of advisers to undertake responsibility for his action in the few cases where this is practicable, without instructions from the Imperial government. In strict law a Governor might dismiss his ministers and carry on the government for a period with a ministry which did not possess support or even seats in the legislature; for even in the latest constitutions the only rule affecting his choice of ministers is that they must have, or within a limited period obtain, seats in Parliament. But the power of the legislature to refuse supplies would speedily compel him to have recourse to ministers possessing the confidence of the legislature, and for practical purposes independent action of this kind is now out of the question.

On the other hand, the Imperial government possesses wide power over Dominion legislation; no Dominion measure can become law save on the assent of the Governor, who in giving or withholding assent must act on the instructions given him by the Crown. The refusal of assent outright is now obsolete, but in lieu Governors may reserve bills for the consideration of the Imperial government, and, unless the assent of the Crown is formally given to the reserved bill by Order in Council within a period of two years, the bill becomes null and void. The same result is produced when an Act is assented to, but contains a suspending clause providing that it shall be-

come effective only on the declaration of the assent of the Crown, a course which obviates the necessity of reservation. In the case of certain classes[1] of Acts, especially those altering the constitution, reservation is requisite, and the Governor's assent, even if accorded, is a mere nullity. Even, however, if an Act is duly assented to by the Governor, it may be disallowed by His Majesty by Order in Council within two years. Wide as the power is, by constitutional practice the exercise of the right of intervention has gradually been surrendered in one field after another; the existence, however, of the power has played a considerable part in securing the assent of the Dominions to principles to which importance is attached by the Imperial government; thus Dominion legislation regarding merchant shipping has largely been affected by the desire to avoid conflict with the Imperial government, both in the case of Australia and New Zealand. The power was also used to secure acceptance by the Dominions of the principle that the restriction of immigration of British Indians and Japanese should be effected by a language test as less offensive to the self-respect of members of these races. Copyright affords a case in which even the demands of Canada for freedom of action were refused for many years, and for a considerable period efforts were made to preserve uniformity in the laws of marriage and divorce against the desire of the colonies to permit marriage with a deceased wife's

[1] Under the Australian States Constitution Act, 1907, there must be reserved every bill passed by a State Parliament which alters the constitution of the legislature of the State or of either house, or which affects the salary of the Governor. In New Zealand bills altering the Governor's salary or the appropriation provided in the constitution for native affairs must be reserved. In the Commonwealth of Australia and the Union of South Africa bills restricting the right of appeal to the Privy Council must be reserved. In the Union it is also necessary to reserve any bill repealing or amending the provisions of the South Africa Act, 1909, regarding the House of Assembly or abolishing or abridging the powers of Provincial Councils. Dominion legislation under the Colonial Courts of Admiralty Act, 1890, must be reserved unless it contains a suspending clause or has been previously approved by the Imperial government. Dominion measures regulating the coasting trade must contain a suspending clause, while legislation regarding shipping registered in the Dominion which varies the terms of the Merchant Shipping Act, 1894, must be confirmed by Order of His Majesty in Council; in practice both these classes of bills are reserved.

sister and to extend the grounds of divorce. Currency legislation at one time was deemed of Imperial importance, and, although the principle of the right of the Dominion of Canada to decide its own fiscal policy was firmly established at an early date, it was not until 1895 that the last restrictions on the right of the Australian colonies to impose differential duties were removed. In the Australian States and Newfoundland the Governor is still required to reserve bills of extraordinary nature and importance which prejudice the prerogative or the rights of British subjects not residing in the territory or the trade and shipping of the United Kingdom, unless authority to assent has been given. But the reluctance of the Imperial government to disallow an Act of a local character is well illustrated by its refusal to interfere with two Acts passed in Queensland in 1920 varying contractual arrangements binding on the State, although the measures raised so much dissatisfaction that the Premier found it impossible, so long as these Acts remained unrepealed, to raise a loan on the London market, where it was felt that reliance could no longer be put on the exercise by the Imperial government of its right to disallow even an Act altering the security on the faith of which money might be lent to the State. The case is the more striking in that strong objections were raised in the State itself to the measures, which were carried through the Legislative Council only after it had been swamped by the acting-Governor, an ex-colleague of the Premier's, and the general election of 1920 resulted in the wholesale reduction of the governmental majority in the Assembly.

The Imperial Parliament, as distinct from the executive, possesses no power of disallowance of Dominion legislation, but it has a paramount power to legislate for the whole Empire, and its enactments, by the Colonial Laws Validity Act, 1865, override those of the Dominions when they conflict with them. In this case again the use of the Imperial power has been steadily contracted until its normal exercise is restricted to cases where the purpose desired could not conveniently be effected by Dominion legislation, and where the Dominion has consented to the legislation; and even in these cases the form adopted

is that of legislation which is not to be applicable to any Dominion unless adopted by that Dominion, as in the case of the Copyright Act, 1911, and the Naturalization Act, 1914. Even more significant is the Matrimonial Causes (Dominions Troops) Act, 1919, which authorized British courts to grant decrees of divorce where a wife had married in the United Kingdom an oversea soldier domiciled in a Dominion, but rendered the Act applicable only in so far as it was accepted by the Dominion in which the husband was domiciled. Imperial legislation is also necessary to extend the powers of the Dominions by the repeal of restrictions imposed by earlier acts, for these no Dominion can affect by its legislation.

Restricted as it is, Imperial control is yet asserted in several fields; it is claimed that Dominion shipping legislation must be confined to ships registered in the Dominions or engaged in the coasting trade, and the Dominions in practice acquiesce for the most part in the claim. Admiralty jurisdiction again is regulated by the Colonial Courts of Admiralty Act, 1890, and Dominion legislation is subject to the approval of the Imperial government in the terms of that Act. But the main spheres in which Imperial control in some degree exists are those of foreign affairs, defence, and constitutional change. The due observance of this control is largely enforced by the Dominions Courts, which are subject to the overriding authority of the Judicial Committee of the Privy Council. The Crown also retains the prerogative of honours.

## CHAPTER IV

### IMPERIAL CONTROL IN FOREIGN AFFAIRS

From the beginning of responsible government the Imperial authorities were wont to consult the wishes of the colonies on matters affecting them directly as opposed to general questions of international policy, which remained the sole affair of the Imperial government and in which the colonies had no desire to take part. Thus Lord Elgin negotiated with the United States a reciprocity

treaty for the benefit of Canada in 1854, and Sir John Macdonald represented Canada in the negotiation of the Treaty of Washington of 1871, which settled for the time numerous important issues vitally affecting both the political and economic interests of the Dominion, menaced by the hostility of the United States to the Empire as a result of the Alabama claims, the objections of Canada to the American exercise of fishery rights under the treaty of 1818, and the Fenian agitation. In 1870, on the other hand, Victorian statesmen, agitated by the possibility of the United Kingdom being involved in a European war, as would have happened had Prussia or France violated the neutrality of Belgium, suggested that the colonies should be granted the power to conclude treaties for themselves, and be assured a position of neutralized states.

By 1880, largely as a result of representations from Canada, the principle was adopted that, in framing general commercial treaties with foreign powers, the United Kingdom should secure that they would not be applicable to the colonies without the assent of their governments, and that, if a colony desired to conclude special arrangements with a foreign state, the Imperial government would use its efforts to secure a treaty for this end, and would employ in the negotiations along with its own representatives a delegate from the colony. Difficulties were found in inducing foreign states to consider special treaties for commercial relations with the colonies, and it was only in 1893 that the first of these was concluded with France regarding Franco-Canadian trade, in the negotiation of which Sir C. Tupper, the Canadian High Commissioner in London, was employed. It was easier to obtain the assent of foreign powers to the right of the colonies to adhere or decline to adhere to general treaties, and in 1882 the principle was included in a treaty with Montenegro. The whole question was examined at a Conference at Ottawa in 1894, when the question of preferential trade within the Empire as affected by existing treaties was discussed, and the Imperial government in 1895 laid down, with general acceptance, the following principles as regards the negotiation and the final approval

of special treaties for the colonies. These treaties must be concluded between the Crown and the foreign state, and not between the state and the colony, since the concession of the treaty power to the colonies would at once break up the Empire, a result desired by neither the United Kingdom nor the colonies. The negotiations would be carried on by His Majesty's representative at the foreign court, with the aid as a plenipotentiary or in a subordinate capacity of a colonial delegate. The treaty would be signed by the plenipotentiaries, after the preliminary approval of its terms by the Imperial and colonial governments, and would ultimately be ratified by the Crown on the advice of the Imperial government, if so desired by the colonial government and, in the event of legislation being requisite to render the treaty effective, by the colonial legislature. No treaty would be approved unless any concessions made to a foreign power under it were immediately extended to every power entitled to most-favoured-nation treatment in the colony under existing treaties, any concessions so made were extended unconditionally to the whole of the British possessions, and no concession was accepted from a foreign government which would prejudice the interests of other parts of the Empire. These principles were reasserted in 1907, and have never been disputed by any Dominion, but in that year the rule as to the participation of the British representative at a foreign court in the actual negotiations was relaxed by permitting Canadian ministers to negotiate with French ministers direct; the rules, however, as to the signature of the treaty by the British representative and the approval of the Imperial government were strictly adhered to. In 1910 an experiment in a modified form of procedure was made in Canada by Sir Wilfrid Laurier, in the shape of informal negotiations with the Consular representatives of Germany and Italy, which resulted in agreements as to tariff concessions. These agreements, which were communicated to the Imperial government, were not regarded as treaties nor were they ratified. They were followed by negotiations at Washington between Canadian ministers, on the introduction of the British Ambassador, and United States ministers, which resulted

in the reciprocity agreement of 1911 between Canada and the United States, which was to have been carried out by reciprocal legislation, and was not to be deemed a treaty. In negotiating it the Dominion ministers paid especial attention to the principles laid down in 1895, but the agreement proved unpopular in Canada, incautious utterances of the President having stimulated the idea that the United States aimed by means of closer commercial relations at drawing the Dominion into her political orbit. The passage through Parliament of the necessary legislation was strongly opposed, and on the dissolution of Parliament the Liberal government was defeated in an appeal to the country, and the agreement dropped.

The desire of Canada to accord a British preference led to the desire of the colonies to secure the abrogation of all treaties which fettered their freedom of action; and after the Colonial Conference in 1897 the Imperial government secured the termination of its treaties with Germany and Belgium which prevented the accord of a preference to the United Kingdom by the colonies. Germany retaliated on Canada by excluding her products from the favourable treatment accorded to the exports from the rest of the British Dominions, and a tariff war arose which was only terminated in 1910 by the informal surrender by Germany of her attempt to interfere in the internal affairs of the British Empire. A further step in the direction of fuller freedom for the colonies was taken in 1899, when the principle was introduced that in concluding new commercial treaties the colonies should be given the right of separate withdrawal as well as of separate adherence. After the Colonial Conferences of 1902, 1907 and 1911, the principle was still further extended, and arrangements were made with practically all the powers between which and the United Kingdom most-favoured-nation treaties existed permitting of the separate withdrawal of any of the Dominions, which thus received complete power of entering into close commercial arrangements with any foreign state, without having to extend the same treatment to many other states on the ground of treaty rights.

The position, therefore, has now been attained in which no Dominion is bound by any commercial treaty to which

it has not assented, and in negotiating general commercial treaties the Imperial government consults the Dominions in order to secure for them whatever concessions they specially desire. If a Dominion wishes to enter into specially close relations with any foreign power, the Imperial government will appoint Dominion representatives as plenipotentiaries to negotiate with the foreign power and to sign, jointly with His Majesty's representative, any treaty arrived at. The terms of the treaty must not contain any concession by the foreign power calculated to damage the interests of any part of the Empire, and the Dominion must extend to the Empire every concession it makes to a foreign power. The treaty must be ratified by the Crown on the advice of the Imperial government acting on the request of the Dominion.

In political matters recognition was early accorded to the necessity of consulting the colonies on questions in which they were especially interested; thus in 1857 Newfoundland was assured that her treaty burdens towards France and the United States would not be increased without consulting her, and Canada was freely consulted in matters affecting her relations to the United States. The Imperial government, however, as responsible for Imperial interests generally, had from time to time to disregard local claims; thus in 1883 the attempt of Queensland to annex New Guinea was disavowed, and Germany was permitted to obtain part of the island: a result due to the grave embarrassments caused to the Empire by the hostile attitude of France over the Egyptian question, and the determination of Germany to found a colonial Empire. The loss of German South-West Africa in 1884, however, was mainly due to the reluctance of the Cape government to accept responsibility for the cost of administering the territory if annexed. The retirement of Britain from Samoa in 1899 excited great feeling in New Zealand, where it was not realized that it was due to strong German pressure applied at a critical moment in the South African War. The necessity of agreeing to a *condominium* with France in the New Hebrides in 1906 was not appreciated in the Commonwealth or New Zealand, and in 1907 Newfoundland

attempted to assert its view of the extent of the fishery rights in Newfoundland waters of United States fishermen under the treaty of 1818 in defiance of the wishes of the Imperial government, which was compelled, in order to avoid open conflict with the United States, to make use of its powers under an Act of 1819 and to issue an Order in Council overriding the law of Newfoundland, and instructing the British naval forces on the station to prevent the enforcement of the Newfoundland law against United States fishing vessels. In all these matters the Imperial government has acted on the principle that in the ultimate issue it must accept the burden of deciding the attitude of the Empire to foreign powers, since it is to it that foreign powers must look under international law for redress of any grievances they may have arising out of the acts of Dominion governments.

As contrasted with consultation on issues immediately affecting them, consultation of the Dominions on matters of general policy is of recent growth. The Dominions had no part in the Hague Conferences of 1899 or 1907, but the conclusion of the Declaration of London, as the outcome of the last Conference, attracted much attention in the Dominions, and evoked at the Imperial Conference of 1911 a protest against the failure to consult the Dominions. It was then readily agreed by the Imperial government that the Dominions should in future be consulted when the instructions to be issued to British delegates at Hague Conferences were being framed, and that conventions provisionally agreed to at such Conferences should be circulated to the Dominion governments before final signature, while a similar procedure should, when time and opportunity and the subject matter permitted, be followed when preparing instructions for the negotiation of other international agreements affecting the Dominions. Sir Wilfrid Laurier then deprecated any attempt to make the rule of consultation of the Dominions on every issue binding, since consultation would involve the Dominions in the necessity of accepting responsibility for any course of action they had agreed upon. Contemporaneously with the meetings of the Conference meetings of the Committee of Imperial Defence

were held, at which the principles of British foreign policy were explained by the Secretary of State for Foreign Affairs, and the approval of the Dominions was accorded to the renewal of the Anglo-Japanese alliance in view of the general European situation.

The advent of the Conservatives to power after the general election of 1911 in Canada led to a proposal in 1912 by the Imperial government that each Dominion should be represented in London by a resident minister, who would attend meetings of the Committee of Imperial Defence when matters interesting the Dominions were under discussion, and would have free access to British ministers in order to obtain full knowledge of British foreign and Imperial policy. The replies of the Dominions other than Canada showed that the proposal was tóo advanced to meet with approval, and that the Dominions were not yet anxious to be brought into close touch with foreign policy. Even in the case of Canada it was not until 1914 that a resident minister was first appointed. On the other hand the Imperial government effected an important innovation in 1912, when at the International Radio-telegraphic Conference of that year they arranged for the separate representation of the Dominions by plenipotentiaries endowed with full powers to represent the Crown in respect of the Dominions, a precedent followed at the Conference on Safety of Life at Sea in 1913–14. Hitherto Dominion delegates had often been appointed plenipotentiaries by the Crown, but they had acted for the whole Empire, and separate sets of plenipotentiaries for the Dominions and for the Empire involved a recognition of the growing claim of the Dominions to a special international status as contrasted with the position of dependencies pure and simple.

The declaration of war in 1914 was made on the responsibility of the Imperial government without the formal assent of the Dominions, which, however, approved it, and the conduct of foreign policy up to the meeting of the Imperial War Cabinet of 1917 was left in the hands of the Imperial government. The War Cabinet meetings of 1917 and 1918 gave the Dominions an opportunity of consultation and suggestion, but the unity thus achieved

was held to be inapplicable to the negotiation for the peace treaty. The Dominions claimed that they should have separate representation at least as generous as that of the minor allied powers, but they desired at the same time to maintain the Empire as a unity. As a result a compromise was devised, under which the British Empire Delegation, which participated with the representatives of the other four principal allied and associated powers in all the proceedings of the Conference, was composed of five members whose composition could be varied, and in matters specially affecting them the four great Dominions were accorded the right of separate representation on the same principle as the lesser powers, although it was agreed that in any case of voting only one British vote could be given. The Dominions thus were enabled to secure, both on the Empire delegation and through their special delegations, full consideration for their views, enjoying in effect a superior situation to the lesser powers which were not able to influence so directly the views of the delegation of one of the five Great Powers. At the same time the Dominions thus emerged as possessed of a diplomatic status of a completely new kind, being autonomous members of an Empire.

The new status of the Dominions is confirmed by the Covenant of the League of Nations, under which not merely is the British Empire a member but so also are the four Dominions and India, the position of the latter being motived by the fact that she has been assured in due course self-government on the Dominion model. The Dominions thus severally have votes in the Assembly of the League, and can each dispatch three delegates to its meetings, while the British Empire as a whole not only has a vote in the Assembly but is one of the powers entitled to membership of the Council of the League. The Dominions in this way again enjoy a position superior to that of the minor powers, since they can influence the instructions given by the Imperial government to the British Empire member of the League Council. On the other hand the Dominions in their relations with the League are autonomous members who can cast their votes in the Assembly as they please. The Union, the Commonwealth, and New

Zealand, which have been granted by the principal allied and associated powers mandates for the German territories in South-West Africa, New Guinea, and Samoa, are subject in the execution of these mandates to the supervision of the League, to which they must render an annual report. The exercise of these mandates has already raised difficult problems; New Zealand on the ground of the territorial limitation of Dominion laws has procured from the Imperial government an Order in Council of March 11, 1920, under the Foreign Jurisdiction Act, 1890, authorizing her administration of Samoa; the Union has evaded the difficulty by the argument that it is essential for the peace, order, and good government of the Union that it should legislate for South-West Africa, and the Commonwealth has acted under the exceptional powers given to it by its constitution to legislate for any territory which it may acquire and for its relations with the islands of the Pacific. New Zealand also has suggested that direct communications with the League on the question of the mandated territories are undesirable, and that communications should be forwarded through the Imperial government.

A further and natural development of the new status assigned to the Dominions is the carrying out of the desire of Canada to have her own diplomatic representative in Washington. The solution here adopted reflects the desire of all parties to conserve the unity of the Empire; the Canadian representative is accredited by His Majesty to the President as minister plenipotentiary, subordinate in status to the Ambassador; he will communicate direct with the Dominion government and act under their instructions in all matters concerning Canada alone, while in the absence of the Ambassador he will act in his place. On matters in which both Imperial and Dominion interests are involved, the minister will co-operate with the Ambassador, while, of course, in the absence of the minister the Ambassador will perform his duties. The Ambassador has always communicated with Canada on the matters affecting it, which form by far the greater part of the embassy work, but the new arrangement will secure the more direct bringing to bear of Canadian views

on the United States government; the fact that the minister is accredited by the Imperial government obviates any objection to receiving him on the part of the United States (which, of course, is not bound to accept a diplomatic representative from any but a state in the technical sense of international law), and secures the ultimate control of the Imperial government, which can withdraw its authority if it thinks fit. The appointment is made, it must be noted, on the advice of the Dominion government, but on the responsibility and authority of the Imperial government, and the full powers granted to the minister by His Majesty are issued on the ministerial responsibility of the Secretary of State for Foreign Affairs. The new step accordingly attains the purpose of Sir W. Laurier in 1911 in facilitating Canadian relations with the United States, while it secures that effective co-operation with the Imperial government which the earlier procedure failed to ensure. The extension of the plan to other Dominions is possible; Mr. Hughes and General Smuts have pointed out that the Commonwealth and the Union are entitled to the same treatment as Canada, but the special reasons which make the step of value in the case of Canada do not exist in the same degree in their cases.

Further recognition of the altered position of the Dominions is afforded by the fact that almost all the treaties concluded by the Imperial government since the decision to accord them a separate status have been signed, not merely for the British Empire, but also for the Dominions by separate plenipotentiaries. The effect of this procedure as applied to the peace treaty with Germany and subsequent conventions has been disputed; in the view of the Canadian Minister of Justice it signifies that without the signatures of the Dominion plenipotentiaries the treaty could not be made binding on the Dominions. This opinion, however, can hardly be accepted, for it would imply that the unity of the Empire had been dissolved, and in fact the treaty with France and the United States, regarding the rendering of aid to France in the event of the menace of German aggression, was not signed by the Dominion representatives at all, but, in

order to safeguard the Dominions, express provision was made in it that no obligation was imposed on the Dominions unless it was accepted by the Dominion Parliaments. The Aerial Navigation Convention of October 13, 1919, makes a curious derogation from the general principle of the recognition of the separate voting power of the Dominions, for, while it assigns to them separate representation on the International Commission for Air Navigation, it treats the Dominions, India and Great Britain as a single entity for the purpose of assigning the number of votes.

The great increase in the international interests of the Dominions has evoked a growing demand that international arrangements concerning the Dominions should be submitted for Parliamentary approval before ratification. This was duly carried out in the case of the treaties of peace, which were only ratified after the Dominion Parliaments had concurred, and the rule will doubtless be generally followed, at any rate in the case of any treaty which imposes any specific liability on a Dominion. Hitherto it has not been considered necessary to obtain more than the assent of the executive governments to the conclusion of arbitration conventions binding on the whole Empire; in these, whenever practicable, provision has been included to secure that the British member of the tribunal of arbitration shall be selected by the Dominion which may be interested in the case.

There remains unsolved the problem of continuous consultation between the Dominions and the United Kingdom on foreign policy, a result not unnatural in view of the pre-occupation of the Dominion governments with the pressing problems of post-war reconstruction. The meetings of the League Assembly, however, necessitate the discovery of means to ensure that the policy of the Dominions and the United Kingdom shall coincide in the assertion of democratic ideals, and that the influence of the Empire shall not be frittered away by dissension on points of minor importance.

## CHAPTER V

### IMPERIAL CONTROL IN DEFENCE

In the early days of responsible government the Imperial forces were still used to ensure both internal tranquillity and protection against foreign attack, but by 1870 it had been clearly recognized that the Dominions should make at their own cost full provision for the former need at any rate. Imperial troops, therefore, were gradually withdrawn save where Imperial garrisons were deemed necessary for defence against the possibility of attack by foreign powers; the garrisons at Halifax and Esquimalt were withdrawn only in 1905 on the offer of Canada to make provision for the defence of the dockyards there, and the troops in the Union were withdrawn only in 1914 on the outbreak of the war, with the assent of the Union government. The right of the Imperial government to station its troops wherever it deems their presence necessary for defence purposes is unquestioned, and full legal authority is given by the Army Act, which applies to the whole Empire, and cannot be overridden by any Dominion legislation. In time of peace, however, the additional expenditure which stationing troops in the Dominions would involve has rendered it inadvisable to adopt the suggestions which have been from time to time made to station Imperial troops in a Dominion such as New Zealand or South Africa, but a change in the international outlook might render an alteration of policy inevitable. No contribution in respect of the maintenance of such forces could be required from any Dominion, except, of course, as a matter of voluntary arrangement.

For purposes of local defence Australia, New Zealand, and the Union have adopted systems of compulsory training, while Canada has a militia system which as operated in practice does not involve compulsion. During the war New Zealand in 1916 and Canada in 1917 adopted compulsion for oversea service, but at referenda in 1916 and 1917 the people of Australia declined to accept compulsion, which the government was unwilling or unable

to induce Parliament to enact without taking the views of the people at a referendum. In South Africa the rebellion of 1914 was supported by the utterly false allegation that the government contemplated the use of compulsion to collect troops for operations against German South-West Africa, and it was obviously impossible in view of the political situation to endeavour to use compulsion to send troops oversea. While in the Dominions the troops are wholly governed under local enactments; when overseas the Imperial Army Act applies to them save in so far as its provisions are varied by local legislation, enacted under special authority for that purpose granted in the Army Act. Throughout the war the Dominion forces overseas were under the commands of the officers appointed by the Army Council, but they were maintained as units and the officers in immediate command were Dominion officers, and no unnecessary interference took place with the internal affairs of the contingents. The aid thus accorded by the Dominions was entirely voluntary; no attempt was made by the Imperial government to compel the grant of assistance, and Dominion autonomy was so carefully respected that, when arrangements were made with the United States in 1918 for rendering liable to service in the United States forces British subjects resident in the United States, Australians were excluded from the operation of the agreement.

The Imperial government possesses no control over the troops raised in the Dominions for home defence, and the Dominions have never consented to enter into any arrangement with the United Kingdom to maintain forces available for oversea expeditions. Efforts, however, have been made to secure that similarity of training and equipment, which is an indispensable condition of successful co-operation, by occasional visits made on the invitation of the Dominions by soldiers of high distinction such as Lord Kitchener, and by the efforts to create in each Dominion a General Staff, which should be in direct communication with the Imperial General Staff and study in harmony with it plans of military operations, while remaining wholly under the control of the

Dominion government. It has been suggested in the report of the Committee on the Army in India that there should be created a true Imperial General Staff, including Dominion and Indian representatives, which would decide the military policy of the whole Empire, but there is no ground to suppose that the proposal would be accepted by any Dominion, in view of the grave derogation from their autonomy which it would involve. Experience of the war is held in the Dominions to show that co-operation can be effective without any such centralized system of control. The war, however, has brought home clearly the advantages of similarity of equipment, the Canadian forces having suffered seriously at the outset from the defects of the Ross rifle, which they had to discard in favour of the Imperial weapon.

The war also, though exemplifying the enormous value of naval power, has introduced no fundamental change in the position. The obvious unfairness of leaving to the United Kingdom the whole burden of naval defence, in view of the services rendered by the navy to colonial trade, resulted at the Colonial Conference of 1887 in the decision of the Australasian Colonies to contribute towards the cost of maintaining a stronger force on the Australian station, and this policy was re-affirmed and extended in 1902, the Cape and Natal also making small contributions. For purely local defence small Australian forces existed under the authority of the Colonial Naval Defence Act, 1865, and after 1902 Australian opinion became convinced of the desirability of creating a local navy. A decision was hastened by the revelation in Parliament in 1909 of the menace of German naval enterprise; New Zealand intimated an unconditional offer of a 'Dreadnought' to the navy, and the Commonwealth expressed anxiety to help, but desired an independent unit, which, however, would be automatically placed at the disposal of the Admiralty in time of war. To harmonize the conflict of views a Naval and Military Conference was summoned in that year, at which the principle was accepted that Canada and Australia should create fleet units, which would be controlled by the Dominion governments in time of peace, but be trained on

British lines and subjected to the same form of discipline as vessels of the Royal Navy, while in war the Admiralty would take complete control. The discussion left undecided the vital questions of the legislative power of the Dominions to control their ships beyond territorial waters, and the international status of the ships, and it was only at the Imperial Conference of 1911 that these difficulties were removed by a comprehensive agreement. Under it definite stations were assigned to the Dominion fleets, which were to carry the White Ensign like British ships, but also, at the Jack-staff, the distinctive flag of the Dominion; if the ships were to proceed beyond these limits the Admiralty was to be informed, and, if they were to go to any foreign port, the consent of the Imperial government must be obtained, and the officers must obey in all international matters the instructions of the Imperial government. Officers and men were to be lent so far as necessary by the Admiralty, and British and Dominion officers were to be entered in the Navy List and to rank for seniority according to the date of their commissions, it being contemplated that officers would spend only part of their time in a Dominion unit in order to secure their more effective training for war purposes. Discipline and training were to follow the lines laid down in the King's Regulations and Admiralty Instructions, from which no departure was to be made without communication between the Dominions and the Admiralty. In time of war it was assumed that the ships would be placed by the Dominions under the control of the Admiralty. The necessary legal authority for the maintenance of Dominion fleets was given by the Naval Discipline (Dominion Naval Forces) Act, 1911, which was accepted by Australia in the following year. In 1913 New Zealand, which had presented at its own cost a battle-cruiser to the navy, changed its earlier policy, and declared for a separate force. In Canada, however, though an Act for a separate navy was passed in 1910, no real progress in its creation was made, and the fall of Sir W. Laurier's government in 1911 was followed by a change of policy, Sir R. Borden proposing, as a measure of immediate assistance to the Empire, to grant 35,000,000 dollars for the construction

of battleships. This intention was defeated by the refusal of the Senate in 1913 to sanction the expenditure. On the outbreak of war, therefore, Canada had practically no naval force save two small cruisers, which it at once handed over to the Admiralty; Australia had a useful force and New Zealand a small vessel, and both Dominions consented to their immediate transfer.

As the outcome of war experience, the Admiralty in 1918 suggested once more the ideal of a single navy always under one control, but the Dominions rejected the solution, on the ground that experience showed the possibility of effective co-operation after the outbreak of war and that local sentiment was opposed to contributing to the cost of a navy under central authority. The only change they suggested was that as Dominion navies developed in course of time, instead of the Admiralty exercising sole control in time of war, an Imperial body including Dominion representatives might possess that authority. In accordance with this decision of the Dominions, Admiral of the Fleet Lord Jellicoe visited the Dominions in 1919 and suggested schemes for the development of local navies to fall under central control in time of war, and in peace to be trained on British lines, with constant interchange of officers, so that the naval service would be effectively a unity. His suggestions include a project of a fleet for the Pacific, composed of Imperial, New Zealand, and Australian units, and of a Canadian fleet in the Atlantic. Decisions by the Dominions on these projects, which would involve an expenditure in excess of Dominion inclination, have been postponed until after the next Imperial Conference, but Canada has secured the application to that Dominion of the Act of 1911 and has begun the building up of a small local fleet, and Australia and New Zealand have received gifts of ships from the Imperial government.

The local navies of the Dominions are not, it will be seen, independent forces; they exist for the definite purposes of local and Imperial defence agreed upon by the governments concerned, and it is recognized that if they are to be used for war purposes they must fall under Admiralty control. Australia indeed in 1909 suggested

that Admiralty control should become automatically effective on the outbreak of war, but this mode of procedure was rejected in 1909 and 1911 on the ground that it ran counter to the principle that in war assistance to the Empire should be granted by the deliberate act of the Dominion and not by the automatic operation of any legal provision. The right and duty of the Imperial government to secure the naval protection of the whole Empire remain unaffected by the existence of Dominion fleets, and the ports of the Dominions are open to British ships at all times.

## CHAPTER VI

## IMPERIAL CONTROL IN CONSTITUTIONAL AFFAIRS

### 1. *Constitutional Changes*

LARGE as is the autonomy of the Dominions, complete power of changing their constitutions is not possessed by them all. In Canada the Provinces have the power to deal with matters other than the distribution of authority between them and the Dominion, and the position of the Lieutenant-Governor, who is a Dominion officer. The Dominion is equally impotent to alter the distribution of powers, and, unlike the Provinces, cannot change the essential form of its government. All changes other than those of detail require Imperial Acts, such as those of 1907 to re-apportion the subsidies to the Provinces from the Dominion, of 1915 to alter the constitution of the Senate, and of 1916 to prolong for a year the life of Parliament. The ground for this rigidity is, of course, the fact that the constitution represents a compact of separate territories, which cannot be altered without general assent. In effect, this principle, which the Imperial government has repeatedly asserted, renders only such changes possible as are asked for by clear majorities in both houses of the Dominion Parliament and are concurred in by the Provincial governments. The Dominion government is anxious to obtain authority for the alteration of the constitution by the Canadian Parliament, but has been unable to overcome the objections of Quebec, which fears that

any change might diminish the security of the French language and the Roman Catholic religion in the Province. The Imperial government is, accordingly, faced with the possibility of an important decision, as it may be called upon to determine what degree of unanimity is necessary before it confers on the Dominion Parliament the power to alter the constitution as contained in the British North America Act, 1867.

In the case of the Commonwealth the question arises how far change is possible within the framework of the constitution of 1900; is it the case that any changes made must respect the federal character of the constitution? The Labour party is opposed to a continuation of federalism, but it is probable that the power of change given by the constitution itself is too limited to render an abandonment of federalism possible, and that recourse to the Imperial Parliament would be necessary to achieve the desired end. The alteration of the State constitutions, apart from their relations to the federation, is subject to the restriction that Acts affecting important changes must be passed with the prior assent of the Imperial government or must be reserved, so that, for instance, proposals for the abolition of the upper houses cannot become law without the deliberate assent of the Imperial government.

New Zealand enjoys great freedom in the alteration of its constitution, and Newfoundland, the constitution of which, unlike that of the other Dominion, rests on the royal prerogative and not on an Imperial Act, is in a similar position, though any bill fundamentally altering the constitution would doubtless be reserved by the Governor. In the case of the Union a special obligation has been undertaken by the Imperial government; the South Africa Act, 1909, safeguards the native franchise in the Cape against abolition or diminution by providing that it can be changed only by a bill passed at a joint session of both houses of Parliament, the third reading of which is agreed to by not less than two-thirds of the total number of members of both houses. In addition the royal instructions to the Governor-General require the reservation of any bill so passed.

Of special concern to the Imperial government is the question of the position of the Governor in the Dominion constitutions, and among the classes of Acts which must be reserved in the case of the States and of New Zealand are those affecting the salary of that office, while the Commonwealth and Union constitutions expressly forbid any alteration of the salary during the continuance in office of a Governor-General. In the Australian States there has for some years been in progress a motion in favour either of the abolition of the office, as part of a wholesale revision of the constitution of the Commonwealth, or of the selection of the representative of the Crown on the recommendation of the State government, whose choice, it is assumed, would fall on a local politician or judge. The Nationalist party in the Union has made the analogous suggestion that the Governor-General should be nominated by the Union government, and not as at present by the government of the United Kingdom. Although the change from Imperial to local selection could be made without formal alteration of the constitution, it has not yet been deemed desirable to accept the proposed change, so long as the Australian States continue to have direct relations with the Imperial government; should a constitutional alteration reduce the status of the States to that of the Canadian Provinces, the heads of the executive government would naturally fall to be selected by the Dominion government. The practical difficulties of local appointments were somewhat strikingly illustrated in 1920 by events in Queensland, where on the advice of the local government the office of Lieutenant-Governor, which carries with it the right to act as Governor in the latter's absence, was conferred on an ex-minister and member of the Labour party. Almost immediately after the departure on leave of the Governor this officer was invited by the government to swamp the Legislative Council, and acted at once on their advice, as was inevitable in view of the fact that his appointment had been arranged for this end, and he had repeatedly asserted his conviction that the upper house should be abolished. The episode elicited petitions from residents in Queensland for the appointment of a Governor from

the United Kingdom, and, despite the objections of the State government, effect was given to this request by the Imperial government. The difficulties to be faced by local nominees in remaining free from the reality or the suspicion of political partiality are obvious, and the needs of the situation seem fully met by the practice of permitting the local government the opportunity of objecting to any individual appointment before it is adopted.

The importance of the Crown as the symbol of Imperial unity has led to suggestions for the regular appointment of princes of the blood royal to the Governor-Generalships, but Dominion opinion is evidently opposed to any hard and fast rule, preferring that appointments should be made on grounds of personal fitness for performance of the duties of the office.

### 2. *Judicial Appeals*

An Imperial Act of 1844 confirming the prerogative enables the Judicial Committee of the Privy Council to determine appeals from any courts in the British possessions, save in cases where subsequent Imperial legislation has taken away the privilege. In the case of the Commonwealth the constitution forbids appeals in constitutional cases involving the rights of the Commonwealth and the States, or of the States *inter se*, without the sanction of the High Court, which in practice is hardly ever accorded, and, as Commonwealth legislation has prevented cases of this type being decided by the Supreme Courts of the States, from which appeals regularly lie to the Privy Council, constitutional issues of this class do not come before the Judicial Committee. The South Africa Act forbids appeals from any South African Court save the Appellate Division of the Supreme Court, and the Privy Council has interpreted the clause as rendering it undesirable to exercise the right of hearing appeals from that division in any save the most exceptional circumstances. Further restrictions on appeals may be imposed by the Parliaments of the Commonwealth and the Union, but bills for this end must be reserved, and no such legislation has yet

been promoted. A Canadian Act, doubtless invalid, forbids appeals in criminal matters, but the Privy Council has never regarded it as part of its functions to deal with criminal appeals save when they involve grave constitutional or legal issues. In civil matters also full use is not made of the authority of the Act of 1844; appeals are not entertained from courts which are not in fact the highest appellate courts available in the Dominion, State, or Province. In the Commonwealth appellants may carry their cases to the High Court or the Privy Council, and in Canada they have the choice of the Supreme Court or the Privy Council, but if an appellant chooses the local jurisdiction the Privy Council will normally refuse leave for a further appeal from the High Court or the Supreme Court if it decides against him. Nor does the Privy Council encourage resorts to its jurisdiction save in cases of importance.

The value of the appeal to the Privy Council does not lie so much in the enforcement of a common view of legal issues as in its special competence to pronounce on constitutional issues and the extent of the royal prerogative, and in its power to enforce the supremacy of Imperial legislation. The difficulties of its position are obvious; the expense entailed to suitors by bringing their cases to London renders appeals available chiefly to wealthy corporations and is regarded as oppressive to poorer suitors, while the existence of the appeal is often regarded as a symbol of Imperial domination, and a reflection on the capacity or integrity of Dominion judges. The discussion of the question of the position of the Privy Council in 1911 and 1918 at the Imperial Conference revealed clearly that its maintenance is gradually becoming impossible in its present form.

Attempts have been made by Acts of 1895 and 1908 to strengthen the Judicial Committee by the addition of Dominion judges, but these efforts have failed of any serious effect as no provision is made for the payment of the judges, who can, therefore, only sit occasionally when they happen to be present in England. The only possible method of preserving the Judicial Committee as a bond of Imperial unity is that suggested by Mr. Chamberlain

in 1900 and pressed on the Imperial Conference of 1918 by Mr. Hughes. The proposals of these statesmen contemplate that the House of Lords as a final court of appeal for the United Kingdom would be merged with the Judicial Committee as a final court of appeal for other parts of the Empire, and Dominion judges would be appointed permanent members of the new court, being selected on the ground of judicial status and familiarity with the law of the Dominions. Such a court might be divided into divisions, one or more of which might hold sessions in the different parts of the Empire, thus obviating the objections to the expense of the present system. Mr. Hughes's suggestions, however, evoked so feeble a response from the representatives of the other Dominions and from the Lord Chancellor that their adoption appears most improbable, and in this event the disappearance of the appeal to the Privy Council can be only a question of time.

### 3. *Honours*

The grant of honorary distinctions of every kind is a prerogative of the King, which in certain special cases is exercised by His Majesty at his own discretion, but normally on the advice of the Prime Minister, or, in the case of honours for colonial services, on the advice of the Secretary of State for the Colonies. In selecting suitable recipients of honorary distinctions the Secretary of State in the case of the Dominions normally relies on the advice which he receives from or through the Governor, and his personal responsibility lies only in deciding which of the recommendations he receives should be submitted for the royal approbation.

It was Sir Wilfrid Laurier who first raised in a definite form the question of the relative part to be played by the Governor and the ministry or the Prime Minister with regard to recommendations. Sir Wilfrid claimed that in this as in all his actions the Governor should merely act on the advice of ministers, but Mr. Chamberlain rejected the view, holding it applicable only to recommendations based on Dominion political or administrative services; in cases of recommendations based on Imperial,

Provincial, or municipal services or services of a charitable, literary, or scientific character the Governor might make recommendations, but should also forward such observations on his proposals as his Prime Minister might desire to offer. The question, however, was raised in a more serious form in 1917 in Canada as the outcome of the conferring of hereditary honours, a baronetcy and a peerage, on resident Canadians, and further unrest was caused by the creation of the Order of the British Empire and the placing of a large number of honours of that Order at the disposal of the Dominion government. The sentiment of the Canadian House of Commons was so plain in 1918 that the government had difficulty in escaping a defeat on the issue, and their avoidance of this result was due only to the fact that they produced representations which they had already made to the Imperial government. These representations demanded that no hereditary honour should in future be conferred on any British subject ordinarily resident in Canada, and that appropriate steps should be taken to provide that after a prescribed period a title of honour held by such a resident should have no hereditary effect. It was also claimed that no honour (other than a war honour or one conferred by the King *proprio motu*) should be conferred on a resident in Canada save with the approval, or on the advice, of the Dominion Prime Minister. At the same time recognition was accorded to the Imperial character of honours by recognizing the right of the Imperial government to decide the character and number of honours to be awarded in Canada from time to time. Although effect has not yet been given to the request for the limitation of the hereditary effect of honours already granted, which in fact should be accomplished by Canadian legislation, the acceptance of the principles by the Imperial government is assured. The advantages of the new rules are obvious; hitherto the Dominion government has been able to evade censure for unsuitable awards by asserting that they had no responsibility, while in future this evasion will be impossible. The Imperial policy of seeking to create a Dominion aristocracy must be admitted to have been unwise; Labour opinion in Australasia is

clearly opposed to all honours, and Sir J. Ward's baronetcy assisted his defeat in the New Zealand election of 1911; in South Africa alone with its abnormal social conditions, dependent on the existence of an inferior race, is feeling less opposed to the innovation of hereditary titles. The value of such marks of distinction (if not hereditary and if wisely bestowed) in cultivating sentiments of Imperial unity is not to be denied, and it is therefore unfortunate that the prodigality of the Imperial government in its bestowal of the Order of the British Empire should have resulted in the refusal of Canada to recommend any appointments to it.

## CHAPTER VII

### IMPERIAL CO-OPERATION

THE early years of the life of the Dominions were spent in dealing with absorbing local problems, and memories of the period of rule from Downing Street encouraged the growth of a spirit which regarded with suspicion any suggestion of closer relations with the mother country. Proposals of Imperial federation were regarded as attempts to withdraw the autonomy which they valued, and, when the first Colonial Conference was summoned to meet in 1887 to celebrate the jubilee of Queen Victoria's reign, it was thought necessary, in order to ensure acceptance of the invitation, to give assurances that no proposal of federation would be mooted. Nor was it until ten years later, on the occasion of the celebration of the sixtieth year of the Queen's rule, that a second Colonial Conference was held, in this case definitely confined to representatives of the self-governing colonies. The coronation of King Edward VII afforded the occasion for a Conference in 1902, and this body affirmed the desirability of the holding of similar meetings at intervals of four years. The Conference of 1907 was, therefore, the first unconnected with some ceremonial, and it was remarkable for defining the constitution of the Imperial Conference, this title being adopted in lieu of that of Imperial Council suggested at one time by Mr. Lyttelton,

which was thought to savour too much of a body with executive authority. The Conference comprises the Prime Ministers of the United Kingdom and the five Dominions (the Prime Minister of the United Kingdom being *ex officio* President), and the Secretary of State for the Colonies, who takes the chair in the absence of the President. Other Imperial and Dominion ministers may attend its meetings to deal with their special topics, but not more than two representatives of any party can discuss any issue save with special permission, and each member has only one vote. The omission of India was deliberately decided upon in 1907 on the ground that India does not possess responsible government, but the omission became indefensible in view of the part played by India in the war, and the admission of India to be a regular member of the Conference is now accepted. In 1911, when the first meeting of the Imperial Conference was held, the lack of special Indian representation was rendered unimportant by the fact that the Secretary of State for India represented its interests with the exceptional authority derived from his membership of the cabinet and his experience as Secretary of State for the Colonies. The constitution of 1907 provided also for subsidiary conferences on topics of special importance arising between meetings of the plenary Conference, and under its terms were held the important Conference of 1909 on Naval and Military Defence, the Copyright Conference of 1910, and several minor Conferences.

The second meeting of the Imperial Conference under the constitution of 1907 was due in 1915, and Mr. Fisher, the Commonwealth Premier, was in favour of a meeting to enable the Conference to deal with war issues, but the other Premiers were too deeply engaged in war problems at home, and perhaps too sanguine of an early termination of the war, to support the suggestion that a meeting should be called. Individual visits, however, were pa by Dominion statesmen during the first two years of t war, the most notable being that of Mr. Hughes, who tc part in the Economic Conference of the Allies at Pa The prolongation of the war, and the necessity of mak more effective the power of the Empire, rendered

summoning of a meeting more and more necessary, and, immediately on the change of administration in December 1916, invitations were sent to the Dominion Premiers to visit England to take part in the deliberations of the War Cabinet, as newly constituted, regarding the conduct of the war and the terms on which peace might be made. Australia was prevented from acting on the invitation by internal difficulties, but the other Dominions were represented, as well as the United Kingdom and India. A division was made of the business discussed; the urgent problems of the war and the terms of peace were dealt with in meetings of the War Cabinet, under the presidency of the Prime Minister of the United Kingdom, while less important questions connected with the war and topics not directly of war interest were relegated to meetings of the Imperial War Conference, at which India was represented and the Secretary of State for the Colonies presided. The same procedure was repeated in 1918, but shortly after the close of the Imperial War Cabinet and War Conference meetings it was found necessary, in view of the rapidity of the Allied advance, to summon the Prime Ministers to a new session of the War Cabinet to deal with the attitude of the Empire in the ensuing Peace Conference. Early in the following year the War Cabinet transferred its sittings to Paris, where its members served on the British Empire delegation and on the Dominion delegations, the policy to be adopted by the Empire delegation being decided by the Imperial War Cabinet, whose President, the British Prime Minister, decided, in consultation with the French and Italian Premiers and the President of the United States, the principles of the settlement of Europe. The break-up of the Paris Conference on the conclusion of the treaty with Germany terminated the effective functioning of the Imperial War Cabinet, no arrangements being made by the Dominion Prime Ministers for any representatives to act for them after their return home.

The term 'cabinet' in its application to the Imperial War Cabinet has been justified by Sir R. Borden on the ground of the right of language to attach new meanings to words, but his own description of the institution as a

'cabinet of governments' indicates the fundamental difference between the new and the established sense of the word in English political terminology. The Imperial War Cabinet had no Prime Minister; the British Premier presided, but only as *primus inter pares*; the members owed responsibility to entirely different electorates and Parliaments; decisions by majority voting were impossible, and the Dominion Premiers could assent to proposals only subject to their being able to obtain the concurrence in them of their colleagues and Parliaments. The Cabinet possessed no executive authority throughout the Empire similar to that exercised by an ordinary cabinet over its territory; no executive action in any Dominion was taken by its authority. The essential purpose which it served was that of consultation between the ministers of the United Kingdom and the Dominions, and the affording to Dominion governments an opportunity of impressing upon the government of the United Kingdom considerations affecting the Dominions. The final decision as to action, however, necessarily lay with the government of the United Kingdom, the British War Cabinet as distinct from the Imperial War Cabinet, and it was with the Admiralty and the Army Council that the legal control of the naval and military forces, including those supplied by the Dominions, rested. In substance, accordingly, the functions of the Imperial War Cabinet and the Imperial War Conference were identical as serving for consultation on matters of common interest, and the distinction between the two bodies lay in the nature of their subject matter. The termination of the war has not brought to a close any vitally new experiment; it has merely removed those special circumstances which gave to Imperial consultation a wholly unusual importance. The Imperial Defence Committee, which has been resuscitated since the termination of active hostilities, and to the meetings of which Dominion representatives are summoned when matters of interest to the Dominions are under discussion, is the natural successor under peace conditions of the Imperial War Cabinet.

It was doubtless inevitable that the close relations induced by the war should have prompted the belief that

fresh constitutional arrangements securing closer co-operation were necessary, and have evoked a revival of the Imperial federation movement, which attained considerable vogue in the United Kingdom in 1916–17. The War Conference of 1917, however, while referring to a Conference to meet after the close of the war the consideration of Imperial relations, recorded its view that any constitutional readjustment, 'while thoroughly preserving all existing powers of self-government and complete control of domestic affairs, should be based upon a full recognition of the Dominions as autonomous nations of an Imperial Commonwealth, and of India as an important portion of the same, should recognize the right of the Dominions and India to an adequate voice in foreign policy and in foreign relations, and should provide effective arrangements for continuous consultation in all important matters of common Imperial concern, and for such necessary concerted action, founded on consultation, as the several governments may determine.' The resolution was arrived at after a debate in which General Smuts insisted on the fact that it expressly excluded any possibility of the adoption of a system of Imperial federation, which he pronounced wholly unsuited to the character of the growing nations of the Empire, a view adopted also by Sir R. Borden in clear terms. The resolution itself is conclusive on this issue; it insists that none of the powers of the Dominions shall be impaired; it demands, instead, that their autonomy shall be fully asserted by the removal, as explained by General Smuts, of the various disabilities under which the Dominions still labour as compared with the United Kingdom. It claims for the Dominions a due share in determining the foreign policy of the Empire, and while it contemplates concerted action, that action must rest on the deliberate choice of each Dominion.

The most important commentary on the Resolution is that given by General Smuts in explaining to the Union Parliament the changes produced in the Empire by the admission of the Union to membership of the League of Nations. He claimed that the Imperial Parliament had no longer the right to legislate for the Union, except

possibly on the express request of the Union in order to extend its powers which are still limited by the South Africa Act; he asserted that the right of disallowance of Union Acts by the Imperial government had disappeared; he asserted also that the Governor-General must be assimilated in position and powers to the Crown in the United Kingdom and must cease to represent in any sense the Imperial government; and he maintained the right of the Union to appoint and receive diplomatic agents if it desired. The omission of the demand for the cessation of appeals to the Privy Council is explained by the fact that they are already practically obsolete in the Union, and may be terminated by Act of the Union Parliament. The autonomy claimed as belonging of right to the Union would thus remove entirely the Imperial control as it is described above. On the other hand, no positive suggestion as to the method of securing continuous consultation has been made, either by General Smuts or any other Dominion statesman. The Canadian government has given an assurance that the opposition shall be represented at the Imperial Constitutional Conference when it is held, and the opposition has shown great reluctance to effect any alteration in Imperial relations, and has questioned the policy of appointing a Canadian minister to Washington. Neither in Australia nor New Zealand has any constructive proposal been mooted, and Sir R. Borden has uttered a warning against any premature action. The obvious step of the establishment in London of resident ministers, as suggested by the Imperial government in 1912, has still failed to receive the approval of the Dominion governments, and the alternative suggestion of annual Conferences ignores the impossibility of prolonged and frequent absences from home by Dominion statesmen.

In his assertion of the autonomy of the Union as it ought to be established by the Constitutional Conference, General Smuts made a significant exception to the doctrine of the obsolescence of the right to disallow Union Acts. Disallowance, he maintained in reply to his Republican opponents, would not merely be justified, but be incumbent upon the Crown, in the case of an Act purporting to

sever the Union from its allegiance to the Crown. The argument is of great interest and importance, as it negatives the right of peaceful secession often attributed to the Dominions, a view derived in part from the period when even Disraeli could regard the colonies as millstones, whose peaceful severance of their embarrassing allegiance would be a godsend to the United Kingdom. The case against the right is, however, clear and convincing, when the claim is made (as by the Nationalist party in the Union) that nothing is required to terminate the connexion of the territory with the Empire but the assent to an Act of secession passed by the Union Parliament. The Parliament of the Union has power only to make laws for the peace, order, and good government of the Union, and the South Africa Act, 1909, whence its authority is derived, was passed in order to unite the British colonies of South Africa 'under one government in a legislative union under the Crown of the United Kingdom of Great Britain and Ireland,' and it is plainly impossible for a legislature deriving its power from such an Act to undo the purpose of the Act. The case of Canada is no less clear, for the British North America Act, 1867, was passed to provide for the federal union of the Provinces 'under the Crown of the United Kingdom.' The language of the Commonwealth of Australia Constitution Act, 1900, is still more emphatic; it recites as its basis the agreement of the people of the colonies of Australia 'to unite in one indissoluble federal Commonwealth under the Crown of the United Kingdom.' The only legal means by which the Empire can be dissolved remains an Imperial Act. The same conclusion can be drawn from the status of the Dominions under the Covenant of the League of Nations; they are recognized there, but only as constituent portions of the British Empire, and by Article X the whole of the members of the British Empire are under obligation to secure the maintenance of its territorial integrity. The withdrawal of any portion from the Empire could, accordingly, be effected, without a revolution, only by agreement between it and the rest of the Empire, and nothing but the clearly expressed desire of the overwhelming majority of the people of a Dominion would

be likely to secure the severance of its ties. The League Covenant, therefore, while it undoubtedly magnifies the status of the Dominions, at the same time unites them in a closer and more effective link with the United Kingdom. Merely as colonies, the Dominions undertook no obligation to render active military or naval assistance to the United Kingdom in war—a position from which Sir Wilfrid Laurier never receded; as members of the League they have undertaken definite obligations towards one another and the Empire as a whole.

For many purposes in future, it is clear, the system of Imperial Conferences must suffice; it has the supreme merit of corresponding effectively to the actual conditions governing Imperial relations, under which each part of the Empire claims the right to come freely to decisions on matters affecting its interests. The resolutions arrived at impose on the members only the duty of giving careful consideration to the proposals embodied in them; if they find on reconsideration that they are unsatisfactory, the governments may withdraw from them without giving just cause of ill-feeling to any other government. Still less, of course, is any subsequent government bound by their principles if it does not freely accept them. Majority decisions have no binding effect on the minority; as General Smuts has insisted, if autonomous members of an Imperial Commonwealth are unfortunately unable to agree on a course of action, they must simply continue to differ. In matters to be discussed in the Assembly of the League unanimity of the British and Dominion delegates will be desirable, but if it cannot be achieved each delegation must cast its vote according to its own views. The British Empire is indeed *sui generis*, and to attempt to apply to it rules derived from the political experience of the past is doubtless as vain as it is difficult. Nor must the positive achievements of the system of Conferences be overlooked. Though slowly and piecemeal, they have helped to simplify the law of naturalization, to secure the Dominions freedom from treaty arrangements no longer congenial to them, to promote improvements in postal and telegraphic communications, to further preferential trade within the Empire, to harmonize

shipping legislation, to promote uniformity of legislation regarding copyright, patents, trade-marks and company law, to secure reductions of Suez Canal dues and the removal of the burden of double income tax, to promote co-operation in Imperial exhibitions, and to induce united action between the several parts of the Empire in dealing with questions of shipping, statistics, and other commercial issues such as the preservation of raw materials essential for Empire use. Steps have been taken to promote the flow of emigration within the Empire instead of to foreign countries, a policy embodied in the establishment of the Overseas Settlement Department.

The Conference also serves the valuable purpose of enabling the United Kingdom and the Dominions to discuss effectively questions arising between them involving serious conflict of interest. The essential problem of this character is that of the position in the Dominions of British Indian subjects, who feel natural annoyance at the Dominion policy both of exclusion and of subjecting to disabilities Indians lawfully residing in the Dominions. The time is clearly past when the United Kingdom could profitably seek by exercise of the power of disallowance to control Dominion legislation in these matters, and the recognition of the right of India to representation at the Imperial Conference is of great value as evincing the true character of the issue as one primarily between the Dominions and India. The effect of the services of India in the war has been marked; the Dominions have accepted the position that India is entitled to apply to immigrants from the Dominions the same rules as are applied in the Dominions to immigrants from India, and that, while exclusion of Indians seeking to enter for purposes of settlement is practised, such immigrants for temporary purposes as merchants, tourists and students, should not be subjected to vexatious formalities. The principle has also been conceded that Indians lawfully resident should, on condition of monogamy, be entitled to introduce their wives and children, and that, in principle, British Indians should not be accorded less favourable treatment than any other Asiatic race. But it has been found impossible in South Africa to accede to the

demand that resident Indians should be accorded full civil rights, and Union legislation of 1919 has reaffirmed and strengthened the old legislation of the Transvaal in the time of the Republic which refused to Indians the power to obtain real property, and has, while safeguarding existing rights, empowered local authorities to withhold licences to trade at pleasure from Indian applicants. New Zealand also in 1920 has found it necessary to increase the stringency of her legislation against Indian immigration, on the ground that Indians have succeeded in learning enough English during residence in Fiji to pass the language test which has hitherto been the mode adopted for purposes of exclusion, and the new method adopted is certain to wound Indian susceptibilities. In Canada labour agitators urge the deportation of all resident Indians, and all these issues can best be dealt with in conference, where some solution may be evolved more easily than by correspondence.

The Conference also may serve as a means of adjusting claims by one of the governments of the Empire against another, which if they arose between states would be appropriate subjects of international arbitration. The deportation, for example, of British subjects from South Africa in 1914 without legal authority would, had they been foreigners, have afforded the foreign government a claim for reparation against the Union, and similarly a claim might have been preferred by a foreign government against Queensland had the contracts which were varied by her legislation in 1920 been with foreigners and not with British subjects. The obsolescence of the power of disallowance has removed the protection formerly assured to British investors against alteration of the security on which their advances to Dominion governments were made. So long as the Imperial government and Parliament controlled the Dominions it was natural that no machinery should be devised to settle inter-imperial differences, but with the development of the autonomy of the Dominions it seems natural that the Conference itself should assume the functions of arbitrator or refer disputes to some tribunal. Where questions of a legal character are concerned, the Judicial Committee of the

Privy Council, with due representation of Dominion judges, might be accorded the functions which the Supreme Court of the United States has successfully assumed in dealing with controversies between the States of the Union. The results of any arbitration would not be legally binding on the United Kingdom or the Dominion, but it can hardly be doubted that they would receive at least as full respect as the awards of arbitration tribunals in cases between foreign powers.

Of very minor importance is the somewhat vexed question of the channel of communication between the Imperial and the Dominion governments. The transfer from the Colonial Office, with its suggestion of Downing Street rule, of all matters affecting the Dominions was proposed at the Conference of 1911, but rejected then on the ground that too much work would thus be entailed on the Prime Minister. The War Conference of 1918 asserted the right of the Dominion Prime Ministers to communicate direct with the Prime Minister of the United Kingdom on all matters which they at their discretion deemed of cabinet importance, an innovation which, unlike the suggestion of 1911, removes the Governor-General as the normal channel of correspondence. The question offers no fundamental difficulty of solution, especially in view of the tendency to divest the Governor of any independent authority, and it is admitted that the duties of the Secretary of State for the Colonies in regard to the administration of the Crown Colonies are sufficient to occupy fully a minister's time, while demanding qualities which have no immediate relation to those which are requisite in dealings with Dominion governments.

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*Printed by Hazell, Watson & Viney, Ld., London and Aylesbury*